

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

GERRY WILLIAMS,  
Plaintiff,

No. C 06-1418 SI (pr)

**ORDER**

v.

DR. KINSEY; et al.,  
Defendants.

This matter is now before the court for consideration of service of process problems, a motion for a stay and for further scheduling.

A. Service of Process

The court issued an order of service on August 7, 2006, requiring service of process on four defendants. Two of the defendants (i.e., Dr. Nguyen and Dr. Kinsey) have not been served and have not appeared in this action.

Dr. Nguyen could not be served with process by the U.S. Marshal based on the information plaintiff provided. The USM-285<sup>1</sup> for Dr. Nguyen stated that service was attempted at Salinas Valley and that the Marshal was unable to locate the individual; more information was needed, such as a first name, because there were two employees with the same last name and title. (Docket # 5.) Plaintiff must diligently search for Dr. Nguyen's current addresses and full

<sup>1</sup>A USM-285 Process Receipt And Return from the U.S. Marshal is prepared for each defendant on whom service of process is attempted and shows the Marshal's efforts to serve that defendant.

1 name. He might, for example, write to or call the personnel offices at the prison and the CDC.  
2 Finding this information remains plaintiff's responsibility, not the court's. Plaintiff must provide  
3 to the court a full name and current address for Dr. Nugyen no later than **January 2, 2007**.

4 Service of process on Dr. Kinsey has a different problem: plaintiff provided the wrong  
5 spelling for Dr. Kinsey's name. Plaintiff recently filed a motion to amend to correct Dr. Kinsey's  
6 name – the man's name is apparently Dr. Kuenzi. Plaintiff's motion to amend is GRANTED.  
7 (Docket # 6.) The clerk will file the amended complaint received on October 16, 2006.  
8 Plaintiff must serve a copy of the amended complaint on defense counsel no later than  
9 **December 15, 2006**.

10 Another problem relating to Dr. Kuenzi is that plaintiff may or may not have tried to  
11 accomplish service of process himself, as evidenced by his recent filing of a notice of lawsuit  
12 and request for waiver of service of summons. This court has a specific way of serving process  
13 in pro se pauper prisoner cases and has chosen not to use the waiver of service of process;  
14 instead, the court orders the Marshal to serve process and sets briefing schedules based on the  
15 anticipated amount of time that such service will take. When the plaintiff takes the matter into  
16 his own hands and sends a waiver of service to a prospective defendant, it creates confusion  
17 about the scheduling and whether service of process has been accomplished. Further confusion  
18 is created when a plaintiff does what the plaintiff did here, as the court cannot figure out whether  
19 he even attempted to send the document to the defendant. Sending the waiver to the state  
20 attorney who may or may not eventually represent Dr. Kuenzi generally does not accomplish  
21 service on Dr. Kuenzi.

22  
23 B. Motion For Stay

24 Plaintiff filed a motion to stay this action while he attends court proceedings in another  
25 prisoner action pending in the Central District of California in a trial set to commence in early  
26 December 2006. The motion for a stay is DENIED. (Docket # 7.) There is no indication that  
27 the trial Williams is attending is expected to be a lengthy trial. Moreover, there is not much  
28 happening in this case that requires Williams' attention: the two tasks currently assigned to him

are simple (i.e., he must mail one document and obtain one defendant's first name) and will consume little time. A stay is simply not warranted under the circumstances.

C. Further Proceedings

1. The clerk shall issue a summons and the United States Marshal shall serve, without prepayment of fees, the summons, a copy of the amended complaint, the order of service and a copy of this order upon Dr. Kuenzi at Salinas Valley State Prison.

2. In order to expedite the resolution of this case, the following briefing schedule for dispositive motions is set for Dr. Kuenzi:

a. No later than **March 2, 2007**, defendant Kuenzi must file and serve a motion for summary judgment or other dispositive motion. If defendant is of the opinion that this case cannot be resolved by summary judgment, he must so inform the court prior to the date the motion is due.

b. Plaintiff's opposition to the summary judgment or other dispositive motion must be filed with the court and served upon defendants no later than **March 30, 2007**. Plaintiff must bear in mind the notice and warning regarding summary judgment in the order of service as he prepares his opposition to any summary judgment motion.

c. If defendant Kuenzi wishes to file a reply brief, the reply brief must be filed and served no later than **April 13, 2007**.

3. No later than **January 2, 2007**, plaintiff must provide a first name for Dr. Nguyen as well as a current address at which he/she may be served with process. Failure to provide the information by the deadline, or if the Marshal cannot serve the defendant with the information provided, will result in the dismissal without prejudice of Dr. Nguyen from this action.

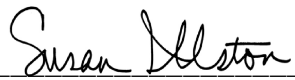
4. No later than **December 15, 2006**, plaintiff must mail a copy of the amended complaint to defense counsel.

5. All communications by plaintiff with the court must be served on a defendant's counsel by mailing a true copy of the document to defendant's counsel. The court may disregard any document which a party files but fails to send a copy of to his opponent. Until a defendant's

1 counsel has been designated, plaintiff may mail a true copy of the document directly to  
2 defendant, but once a defendant is represented by counsel, all documents must be mailed to  
3 counsel rather than directly to that defendant. In the future, plaintiff must attach to each  
4 document he files a proof of service that shows he has mailed a copy of that document to defense  
5 counsel.

6 IT IS SO ORDERED.

7 Dated: November 21, 2006

  
SUSAN ILLSTON  
United States District Judge

United States District Court

For the Northern District of California